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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

10 IN RE ) Bankruptcy Case  
11 SYNERGY JOINT VENTURE, LLC, ) No. 10-62766-fra11  
12 \_\_\_\_\_ Debtor. ) MEMORANDUM OPINION

13        This matter is before the Court on the motion of 706 Madrona, LLC (“Madrona”) for an order  
14 allowing payment of an administrative claim for unpaid rent. The matter was heard on June 8, 2011. For the  
15 reasons stated in this memorandum, the Court finds that the motion should be allowed, notwithstanding the  
16 Debtor’s objection.

17 On September 12, 2006, the Debtor-in-possession entered into a lease with Madrona which provided  
18 for occupancy of a 12,600 square foot area in a building located at 706 Madrona Avenue, S.E., Salem,  
19 Oregon.

20 The subject property was never occupied by the Debtor: instead an entity owned and managed by the  
21 same principals called Synergy Fitness, LLC, entered the property remained its sole tenant through the times  
22 in question. Both Synergy Fitness and Synergy Joint Venture filed petitions for relief under Chapter 11 of  
23 the Bankruptcy Code on May 10, 2010.

24 The tenants maintain that Synergy Fitness executed a lease agreement with Madrona, although the  
25 only lease in evidence is the lease with Synergy Joint Venture. Still, it appears uncontested that: (1)  
26 Synergy Joint Venture, LLC, the Debtor here, was a tenant, albeit not the only tenant, and (2) only Synergy

1 Fitness actually occupied the property.

2       Approximately \$113,000 in rent has accrued post-petition, of which \$51,900 was actually paid. The  
3 parties have agreed to limit the remaining claim to \$30,000. The dispute is over the claims priority.

4       Relying on Burlington Northern Railroad Co. v. Dant & Russel (In re Dant & Russell), 853 F.2d 700  
5 (9th Cir. 1988), the Debtor-in-possession objects to administrative treatment, alleging that no benefit accrued  
6 to the estate from Synergy Fitness's occupation of Madrona's property.

7       11 U.S.C. § 365(d)(5) provides:

8       The trustee shall timely perform all the obligations of the debtor, except those specified in  
9 section 365(b)(2), arising from and after the order for relief under any unexpired lease of non-  
residential real property, until such lease is assumed or rejected, notwithstanding section  
10 503(b)(1) of this title.

11       The phrase "notwithstanding section 503(b)(1)" was added by legislation which became effective  
12 shortly after the Dant & Russell opinion was issued. The effect of this clause is that administrative priority is  
13 given for non-residential lease claims during the post-petition, pre-rejection period, without regard to the  
14 lease's benefit to the estate. In re Pacific-Atlantic Trading Co., 27 F.3d 401, 403-405 (9th Cir. 1994), In re  
15 Troutman Invement Co., E04-5, n.7 (Bankr. D.Or. 4/13/04, Radcliffe, J).

16       The plain language of the statute requires a trustee – which includes any debtor-in-possession, 11  
17 U.S.C. § 1107(a) -- to perform the debtor's obligations post-petition. Notwithstanding the fact that a  
18 different entity occupied the property, the Debtor-in-possession here was the tenant named in the lease, and  
19 obligated to pay rent, even if it did not receive any direct benefit. Having failed to do so, the resulting claim  
20 is entitled to administrative priority.

21       The motion is allowed, and Madrona is deemed to hold an allowed administrative claim in the sum of  
22 \$30,000. Counsel for Madrona shall submit a form of order consistent with the foregoing, which constitutes  
23 the Court's findings of fact and conclusions of law.

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FRANK R. ALLEY, III  
Chief Bankruptcy Judge